IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 12.12.2017

ORDER PRONOUNCED ON: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.42 of 1997 and 189 of 2017
in IP No.33 of 1996

In Appl. No.42 of 1997

The Official Assignee
High Court, Madras. ... Applicant

Vs.

1. P.Veeraswamy
2. K.Kirubakkaran

3. Tamil Nadu Slum Clearance Board
   Rep by its Chairman,
   5, Kamarajar Salai, Triplicane,
   Madras 600 005.

4. Estate Officer VI,
   T.P.Chatram Slum Clearance Board ... Respondents

WEB COPY

Prayer: Petition filed under Sections 7 and 68 (1) (a) of the Presidency Towns Insolvency Act, 1909, prays for

i) grant a declaration that the cancellation of original allotment in favour of the first respondent insolvent herein made by the Tamil Nadu Slum Clearance Board, the third respondent herein under

http://www.judis.nic.in

Proceedings No.thhpa/nr.K.f.vz;.1166/gp/84/v.m.6.2 dated 1.11.95 and the reallotment made in favour of the second respondent under proceedings No.e.f.vz;.28542/95/E3 dated 15.11.95 are not valid in law and shall be void against the Official Assignee;

(ii) grant a consequential declaration that the original allotment made by the Slum Clearance Board, third respondent herein in favour of the first respondent/insolvent stands good and restored and therefore the schedule property vest in the Official Assignee;

(iii) direct the Official Assignee to sell the entire schedule property bearing door No.387 (Plot No.412), N.S.K. Nagar, Arumbakkam, Madras 106 (Land and superstructure) in public auction.

For Applicant : Mr.M.Vasantha kumar,
Deputy Official Assignee

For 1st Respondent : Mr.M.Chidambaram

For 2nd Respondent : Mr.V.Ayyadurai, Sr. Counsel

In Appl. No.189 of 2017

P.Veeraswamy ... Applicant

Vs.

The Official Assignee
High Court, Madras 600 104. ... Respondent

WEB COPY

Prayer: Petition filed under Order 2, Rule 1 of Insolvency Act read with Section 90(5) of the Presidency Towns Insolvency Act, 1909, prays for condoning the delay of 7158 days in filing the petition to discharge unconditionally to the applicant.

http://www.judis.nic.in

For Applicant : Mr.M.Chidambaram

For Respondent : Mr.M.Vasantha kumar,
Deputy Official Assignee

COMMON ORDER

Application No.42 of 1997 has been taken out by the Official Assignee under Section 7 read with Section 68 (1) (a) of the Presidency Towns Insolvency Act, 1909, the brief facts leading to this petition are as follows:

2. The first respondent debtor was adjudicated as an insolvent on 25.04.1996, on his own petition and all his assets that were directed to vest with the Official Assignee. It is claimed that in the report of the Official Assignee that at the commencement of the insolvency, the insolvent was found to be residing in the premises bearing Door No.387, N.S.K Nagar, 21st Street, Arumbakkam, Madras 106. It is claimed that the insolvent who was examined on 26.04.1996, had in his sworn statement stated that the subject land measuring about 1000 Sq.ft was allotted to him by the Slum Clearance Board in the year 1984, where he has constructed a building, consisting of three floors during the year 1988. He has further stated that he had borrowed a sum of Rs.20,000/- from Mr.Ranganathan and Mr.Sivakumar and mortgaged the property under a Registered Deed during January 1995. It is also claimed that he had appointed the said

http://www.judis.nic.in

Ranganathan, the mortgagee as his power agent on the strength of the promise that the said Ranganathan and Sivakumar would advance a loan of Rs.25,00,000/-. According to the insolvent since they did not advance the money as promised, he cancelled the said power of attorney. It is also claimed in the report of the Official Assignee that the second respondent-Kirubakaran, who is one of the creditors pressurised the insolvent and have grabbed all the immovable properties of the debtor.

3. In Paragraph 5 of the Insolvency Petition, the insolvent had stated that the property was allotted to him by the Slum Clearance Board in 1984 and the Board is yet to execute a sale deed in his favour, though he had paid the entire costs payable under the lease cum sale agreement. It is also contended that the second respondent/Kirubakaran had by force compelled him to transfer the ownership of the property in question for a meagre consideration of Rs.22,000/- and the second respondent got the ownership transferred in his name by the Slum Clearance Board/third respondent herein. It is also claimed that he was forced to vacate and hand over the possession to the second respondent-Kirubakaran. It is also seen from the report of the Official Assignee that the insolvent had informed the Official Assignee on 06.05.1996 that he has been forced to deliver vacant possession to the second respondent/Kirubakaran. It appears that he also

WEB COPY

http://www.judis.nic.in

made a request to the Official Assignee to seal the premises and the Official Assignee has deputed the staff to seal the premises. It was reported that the second respondent-Kirubakaran, who was in occupation of the property resisted such sealing and claimed ownership to the property. It is also contended that the insolvent was not available and he has been absconding.

4. The sum and substance of the report of the Official Assignee is that the cancellation of the allotment done by the Slum Clearance Board on 01.11.1995 is invalid and so also the reallotment made in favour of the second respondent by the Slum Clearance Board on 15.11.1995. The Official Assignee would contend that the debtor having been adjudicated as an insolvent on 25.04.1996, and all his property having vested in the Official Assignee any transfer or alienation made within two years prior to the adjudication becomes questionable.

सत्यमेव जयते

5. This application is resisted by the second respondent contending that he had filed applications in Application Nos.191 and 192 of 1996 in IP No.33 of 1996 to implead himself as party to the proceedings and for other reliefs. These applications were dismissed by this Court and the same was challenged by the second respondent in OSA Nos.260 and 261 of 1996. It

WEB COPY

http://www.judis.nic.in

is not in dispute now that OSA. Nos. 260 and 261 of 1996 have already been dismissed and the SLP filed against the orders in OSA Nos.260 and 261 of 1996 were disposed of by the Supreme Court, observing that the second respondent will have to abide by the orders passed in Application No.42 of 1997, which is stated to be pending. It is also claimed that the insolvent had on 25.12.1990 conveyed the property by way of an unregistered sale deed in his favour and that he is in possession of the property. It is claimed that the Slum Clearance Board which had allotted the property to the insolvent had cancelled the allotment on 01.11.1995, after the said cancellation the property reverts back to the Slum Clearance Board and the Slum Clearance Board had alloted the property to the second respondent on 15.11.1995 and a regular lease cum sale agreement has been executed by him with the Tamil Nadu Slum Clearance Board. It is also claimed that he has paid the necessary charges and the sale deed has also been executed in his favour by the Slum Clearance Board.

6. According to the second respondent the Official Assignee cannot question the order of cancellation made by the Slum Clearance Board. The very premise on which the application had been filed by the Official Assignee is contested by the second respondent claiming that till the execution of the sale deed the insolvent does not become the owner of the

WEB COPY

http://www.judis.nic.in

property. It is also contended that neither the allotment order nor the lease cum sale agreement would vest, in the insolvent, any right over the property. Therefore, the insolvent though was alloted the property cannot be deemed to be the owner of the property since the allotment has been cancelled even before the filing of the insolvency petition in IP No.33 of 1996, the same will not vest in the Official Assignee to enable the Official Assignee to seek a declaration that the cancellation of the allotment by the Slum Clearance Board is backed.

7. The Slum Clearance Board filed a separate counter affidavit contending that since the insolvent committed breach of the conditions of allotment, the allotment was cancelled by the Slum Clearance Board and the property was alloted to the second respondent. The Slum Clearance Board would claim that since the cancellation prior to the Insolvency Petition under the powers vested in the Board by the Tamil Nadu Slum Area Improvement and Clearance Act, 1972, the insolvent would have no title to the property in question, hence the application filed by the Official Assignee is not maintainable. This application was allowed by this Court by an order dated 29.09.1997, as against the said order, an appeal was filed by the second respondent in OSA No.37 of 1998. The said OSA No.37 of 1998 was allowed by this Court on 17.12.1999, setting aside the order dated

WEB COPY

http://www.judis.nic.in

29.09.1997 and the matter was remitted back to the Insolvency Court to be decided after affording an opportunity to the parties to let in evidence. Thereafter evidence was adduced by both the parties and the application was again disposed of on 27.06.2007 by the Insolvency Court, observing that the validity or otherwise of the action of the Slum Clearance Board in cancelling the allotment cannot be gone into by the Insolvency Court and the title to the property cannot be decided in this application. Therefore, this Court rejected the application directing the Official Assignee to take appropriate steps under Law to agitate the issue before the competent legal forum. This order was challenged by the Official Assignee in OSA No.361 of 2008 and said appeal was allowed by the Division Bench of this Court on 17.11.2008. The Division Bench had observed that Section 7 of the Presidency Towns Insolvency Act, 1909, empowers the Court, viz. the Insolvency Court to go into the question as to whether the cancellation of the allotment made in favour of the insolvent is in accordance with law and also whether the allotment made in favour of the second respondent is valid in law. On such conclusion the Division Bench remitted the matter again to the Insolvency Court for consideration on the basis of the evidence was adduced. Hence the matter is now before me.

8. The sum and substance of the contention of the Official Assignee

WEB COPY

http://www.judis.nic.in

is that the cancellation of the allotment by the Slum Clearance Board on 01.11.1995 is not valid, therefore, the property should be deemed to be the property of the insolvent on the date of adjudication i.e. on 25.04.1996. As the property vests in the Official Assignee on adjudication the Official Assignee will have the powers to seize the property as if the property belonged to the insolvent.

9. I have heard Mr.M.Vasantha kumar, Deputy Official Assignee, Mr.Chidambaram, learned counsel appearing for the first respondent/insolvent and Mr.V.Ayyadurai, learned Senior Counsel appearing for second respondent/ allotee.

10. The issue that is to be decided is as to whether the cancellation made by the Slum Clearance Board on 01.11.1995 is valid or not. If the cancellation is held to be valid then insolvent does not have title to the property. It is settled law that neither the allotment order nor the lease cum sale agreement vest any title in the allotee/lessee till such time a duly registered document of transfer, viz, the sale deed is executed by the Slum Clearance Board in favour of the allottee. It is clear that the insolvent did not have an absolute title over the property in question till 01.11.1995 that is date of cancellation. He also did not challenge the cancellation till he filed

WEB COPY

http://www.judis.nic.in

the insolvency petition on 19.04.1996. It is only after the filing of the insolvency petition the insolvent has come forward with a plea that he was dispossessed forcibly by the second respondent and the insolvent has actually sought help of the Official Assignee to retrieve the property. A reading of the report of the Official Assignee would show that it is at the instance of the insolvent the Official Assignee had come forward to seek the prayer made in this application. Before proceeding further the allegations made by the insolvent in the Insolvency Petition should be look into.

11. In paragraph 5 sub para 4 of the Insolvency Petition, the insolvent has stated as follows:

> "*5. (iv) The property No.387, N.S.K. Nagar, Madras 106, the land was allotted by Slum Clearance Board and the Board is yet to execute the sale deed to the petitioner though the entire cost was paid. The petitioner has put up three floors and the present value of the property will be easily around Rs.27,00,000/- through co-ercive and force Mr.Kirupakaran compelled the petitioner to transfer the ownership in his name for a meagre consideration of Rs.22,000/- and got the ownership transferred in his name from the Slum Clearance Board. The petitioner who is residing in that house has to vacate and hand over possession to the said Mr.Kirupakaran, on or before 25.04.1996. The petitioner has already sent his family to his native place.*"

WEB COPY

http://www.judis.nic.in

12. It is seen from the allegations made above that the insolvency petition was filed on 19.04.1996, anticipating a dispossession on 25.04.1996, though the insolvent would list out nearly four properties as belonging to him in the body of the petition has not chosen to include any of the properties in the schedule to the petition. The insolvent would admit that he owed monies to Kirubakaran the second respondent and one Ranganathan. But the said Kirubakaran and Ranganathan have not been shown as creditors in the list of sundry creditors filed along with Insolvency Petition.

13. Mr.M.Vasanthakumar, the Deputy Official Assignee appearing on behalf of the Official Assignee would submit that the cancellation of the allotment dated 01.11.1995 made by the Tamil Nadu Slum Clearance Board is on the premise that the insolvent was not in possession of the property. He would invite my attention to Ex.P8, which is original payment receipt issued by the Slum Clearance Board to the insolvent evidencing payment of the installments payable under the lease cum sale agreement, Ex.P10 the water tax receipts in the name of the insolvent for the period 18.07.1993 to 08.03.1994, Ex.P13 No Objection Certificate dated 29.06.1993 granted to the insolvent by the Slum Clearance Board to enable him to put up

WEB COPY

http://www.judis.nic.in

construction in the said land, Ex.P14 the Property Tax Receipts for the period from 1989-1990 till 1994-1995 and the Ex.P15, the original approved plan for the super structure issued to the insolvent approved by the Estate Officer of Tamil Nadu Slum Clearance Board. Relying upon the above documents the learned Deputy Official Assignee would contend that the insolvent had paid the entire amount due and he has been in possession of the property and therefore the cancellation made by the Slum Clearance Board on 01.11.1995 under Ex.P9 on the sole ground that the insolvent was not in possession of the property cannot be said to be valid. The Deputy Official Assignee would also contend that the allotment of the property in favour of the second respondent within 15 days from the date of cancellation on 15.11.1995 makes the re-allotment highly doubtful.

14. According to the Mr.M.Vasantha Kumar, Deputy Official Assignee the re-allotment has been made by the Slum Clearance Board only based on Ex.R1 dated 25.12.1990, which is an unregistered sale deed executed by the insolvent in favour of the second respondent. He would also point out that what is sought to be sold is only vacant land, but the insolvent had already put up construction in the said property. Therefore, according to the Deputy official Assignee, the building situate in the subject property has not been alienated. He would also invite my attention to Ex.P16 dated

WEB COPY

http://www.judis.nic.in

28.02.1997 a letter given by the counsel the second respondent proposing to purchase the building.

15. The Official Assignee would rely upon the payment of property tax by the insolvent under Ex.P14 series, Water Tax under Ex.P10 series to show that the insolvent was in possession of the property. The very validity of these two documents is highly doubtful. A perusal of Ex.P10 series shows that Water Tax has been paid by the insolvent for the first half year 1991 to second half year 1992 under two receipts and first half year 1991 to first half year 1993 -1994, first half year 1991 to second half year 1991- 1992 and second half year 1993 - 1994. These receipts relate to payment of water tax and water charges. As regards the payment of property tax, it is seen from the Ex.P14 series that property tax for the half year commencing from second half year 1989 - 1990 to first half year 1994-1995 has been paid on the same day i.e. on 30.08.1994. Ex.P13 is the No Objection Certificate issued by the Tamil Nadu Slum Clearance Board to the insolvent for putting up the superstructure which has been issued on 29.06.1993. Ex.P15 is the original approved plan of the proposed structure to be constructed in the land alloted to the insolvent.

16. It does not bare any date nor there is any proof to show that it was

WEB COPY

http://www.judis.nic.in

approved by the Tamil Nadu Slum Clearance Board. When the no objection certificate itself had been issued only on 29.06.1993 under Ex.P13, it is not known as to how the insolvent paid the Property Tax and Water Tax for periods prior to that. This renders the claim of the insolvent that he had put up the construction prior to 1993 highly doubtful. The lease cum sale agreement has been produced as Ex.P12, Clause 8 of the lease cum sale agreement reads as follows:

> "8. Fj;jif tpLgthpd;/tpw;gidahshpd; vGj;J K:ykhd Kd; mDkjpapd;wp ,e;jr; brhj;J KGtija[nkh mjd; gFjp vjida[nkh xg;gil bra;a my;yJ cd; Fj;jiff;Ftpl my;yJ gpwh; cilikapy;tpl Fj;jifjhuUf;F/th';FgtUf;F chpik ,y;iy.""

17. From the above Clause it could be seen that the Slum Clearance Board has got a right to cancel the allotment if the allottee parts with the possession of the property in favour of some other person. The cancellation order dated 01.11.1995, which has been produced as Ex.P9 would show that the cancellation is based on the fact that the insolvent is not residing in the property concerned. Admittedly, the insolvent has not chosen to challenge the said cancellation. It remains to be seen as to whether the Official Assignee can question the cancellation.

WEB COPY

http://www.judis.nic.in

18. The application in Application No.42 of 1997 seeks a declaration that the cancellation of the original allotment in favour of the insolvent dated 01.11.1995 and the consequent re-allotment made in favour of the second respondent on 15.11.1995 are not valid in law and shall be void as against the Official Assignee. The second prayer is for an order granting a consequential declaration that the original allotment made by the Slum Clearance Board in favour of the first respondent/insolvent stands good and property shall vest in the Official Assignee.

19. The Division Bench while remitting the above application by its order dated 17.11.2008, has observed that this Court, viz. the Insolvency Court can decide all questions arising in insolvency. Section 68 (1) (a) of the Presidency Towns Insolvency Act, 1909, empowers the Official Assignee to sell all or any part of the property of the insolvent, Section 68 (1) (d) enables the Official Assignee to institute, defend or continue any suit or other legal proceedings relating to the property of the insolvent. The basis on which the Official Assignee seeks to challenge the cancellation is that the insolvent was in possession of the property on the date of the cancellation i.e., 01.11.1995. This claim of the Official Assignee in the report dated 12.02.1997 is solely based on the claim made by the insolvent in his petition in IP No.33 of 1996 as well as during his examination on 26.04.1996 after

WEB COPY

http://www.judis.nic.in

the order of adjudication.

20. I have already referred to the discrepancies in the claim for possession of the insolvent. Though certain documents, viz. the No Objection Certificate for construction, Property Tax Receipts, Electricity Bill etc. have been produced, none of them are during the year 1995. No Objection Certificate for putting up super structure, marked as Ex.P13 had been issued on 29.06.1993, the Property Tax receipts issued by the Corporation, marked as Ex.P14 series are for the years 1989-1990 to 1994-1995 and that the entire tax for these years was paid on 30.08.1994. A very reading of the Insolvency Petition shows that the insolvent had approached the Court only with a view to retrieve the schedule property from the second respondent in whose favour he had already executed an unregistered sale deed, which has been marked as Ex.R1. Of course the said sale deed purports to convey the property allotted to the insolvent in favour of the second respondent. A sale deed requires to be Stamped and Registered as per the provisions of the Stamp Act as well as the Registration Act. The said document has been allowed to be marked as Ex.P34/Ex.R1. Though the insolvent would claim that the document was obtained by coercion, there is no evidence except the interested testimony of the insolvent to show that the said document was obtained by coercion. Apart from the insolvent his wife

WEB COPY

http://www.judis.nic.in

was also signed the document and the said document had been executed on 25.12.1990. Till the filing of the Insolvency Petition in IP No.33 of 1996 on 19.04.1996, the insolvent has not whispered anything about the alleged coercion in any forum. This creates a doubt on the claim of the insolvent that the document, viz., Ex.P34 had been obtained by the second respondent by coercion. I must point out at this juncture that the said document has not been either stamped in accordance with the Stamp Act or registered as required under the Indian Registration Act. However, want of Registration will not make the document entirely inadmissible in evidence. An unstamped instrument cannot be looked into for any purposes, but if unstamped instrument is allowed to be marked in evidence without an objection relating to the Stamp Duty payable under the document, the said admission cannot be called in question at any stage of the proceeding in which it has been marked in view of Section 36 of the Indian Stamp Act. It is seen from the record that the marking of the document, viz. Ex.P34 was not objected to. In fact it has been marked on the side of the Official Assignee, the original has been marked as Ex.R1 by the second respondent. Therefore, the admission of the document in evidence cannot be questioned now. The contents of the document very clearly shows that the insolvent had parted with the possession of the property in favour of the second respondent. Of course, in view of the absence of Registration and

WEB COPY

http://www.judis.nic.in

proper stamping, the said document may not convey title in the property to the second respondent. Even otherwise, the said document cannot operate to convey title in the property to the second respondent in as much as insolvent himself had no title, on the date of the execution of the said document. Therefore, I am of the considered opinion that the said document, viz. Ex.P34/Ex.R1 can be looked into for the limited purpose of deciding the question of possession of the property on the date of the cancellation, viz. 01.11.1995. Of course, the insolvent would claim that he was in possession of the property and he was forced to vacate on or before 25.04.1996.

21. The Insolvency Petition came to be filed on 19.04.1996. A perusal of the averments in the Insolvency Petition as well as this application would go to show that the object of the insolvent was to somehow get over the order of cancellation. As already pointed out though the insolvent would claim that there were several creditors including the second respondent and one Ranganathan, he had not chosen to disclose item as creditors in the schedule to the petition. Similarly, the property subject matter of this petition has not also been shown as the property of the insolvent in the list of assets of the insolvent.

WEB COPY

http://www.judis.nic.in

22. During the course of the arguments Mr.V.Ayyadurai, learned Senior Counsel appearing for the second respondent submitted that the counsel for the debtor, viz. Mr.M.Ramachandran has also appeared on behalf of the Official Assignee in this very proceeding. Surprisingly that statement is true. The Chief-examination of the witness, viz. Deva Arul, who is the Section Officer in the office of the Official Assignee has been conducted by the said M.Ramachandran, who is the counsel on record for the debtor also in the Insolvency Petition. It is seen from the evidence on record that the said M.Ramachandran and also Cross-examined the second respondent as the counsel for the first respondent. Of course, there may not be any conflict of interest but at the same time proprietary requires that the counsel for the debtor is not engaged by the Official Assignee also. I do not propose to dwell deep into the said issue, since nearly 14 years had lapsed from the time the evidence was recorded in this application. But I must point out that it is rather unfortunate that such a situation had occurred due to the action of the then Official Assignee.

WEB COPY

23. As already pointed out Section 7 of the Presidency Towns Insolvency Act, authorizes the Insolvency Court to decide all questions that arise in insolvency. Section 68 (1) (a) enables the Official Assignee to sell all the properties of the insolvent. Section 68 (1) (d) enables the Official

http://www.judis.nic.in

Assignee to take legal proceedings in respect of the properties of the insolvent. The proceedings that are under challenge in Application No.42 of 1997 are the proceedings of the Slum Clearance Board dated 01.11.1995 cancelling the allotment in favour of the insolvent. An incidental question that arises is whether the insolvent had title to the property in question either before or at the time of or after the cancellation. It is an admitted fact that the Slum Clearance Board had not executed any sale deed in favour of the insolvent. All that was available was an order of allotment and a lease cum sale deed agreement. It is settled law that neither an order of allotment nor the lease cum sale agreement created any interest in the immovable property. Therefore, the insolvent did not have title to the property in question. All that he had was a right to obtain a sale deed. The cancellation order dated 01.11.1995 has been made solely on the ground that the insolvent was not in possession of the property. The document dated 25.12.1990 may not confer title on the second respondent but it will atleast have the effect of estopping the insolvent from contending that he continued to be in possession of the property *de hors* the document. There are several inconsistencies in the case of the insolvent relating to the possession of the property and the construction of the super structure, I have pointed out those inconsistencies earlier. A reading of the evidence of the insolvent coupled with the documents produced would show that the case of the insolvent

WEB COPY

http://www.judis.nic.in

regarding its possession particularly during the year 1995, when the allotment came to be cancelled is not convincing. The evidence available on record is sketchy and unsafe to be relied upon.

24. The allegations made in the Insolvency Petition as well as the evidence of the insolvent lead me to believe that the very Insolvency Petition has been filed in bad faith and it is an attempt by the insolvent to use the law of Insolvency as a tool to get over the murky situation which he had landed himself in. I therefore conclude that the Official Assignee has not made out a case for declaring the order of cancellation dated 01.11.1995 as invalid. If the order of cancellation is upheld, it follows that the other prayers sought for cannot be granted.

25. In the light of the above conclusions, the application in Application No.42 of 1997 is dismissed, holding that the order of cancellation is valid. Once the order of cancellation is held to be valid, the allotment by the Slum Clearance Board in favour of the second respondent cannot be questioned.

WEB COPY

26. In the result the application in Application No.42 of 1997 is dismissed. However, in the circumstances of the case, there will be no order as to costs.

http://www.judis.nic.in

27. The Application No.189 of 2017 has been filed seeking to condone the delay of 7158 days in filing the petition seeking discharge. Considering the reasons assigned in the affidavit filed in support of the application the delay in seeking discharge is condoned.

21.12.2017

Index: No

Internet: Yes

Speaking order

jv

WEB COPY

http://www.judis.nic.in

R.SUBRAMANIAN,J.

jv

Pre Delivery Order

Application Nos.42 of 1997 and 189 of 2017 in IP No.33 of 1996

21.12.2017

WEB COPY

http://www.judis.nic.in